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Leg

9 August 1989
OCA 2791-89

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MEMORANDUM FOR: Arms Control Intelligence Staff

ATTENTION:

[Redacted]

FROM:

[Redacted]

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Legislation Division
Office of Congressional Affairs

SUBJECT: On-Site Inspectors Program

Attached for your information is a copy of the 1 August 1989 Congressional Record, wherein the Senate passed an amendment to the DoD Authorization Bill pertaining to the On-Site Inspectors Program. As you will note, the amendment states that the On-Site Inspection Agency shall establish a database of prospective personnel to conduct on-site inspections for future arms control agreements.

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Attachment

OCA/LEG/[Redacted] (8 Aug 89)

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STAT

August 1, 1989

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Mr. NUNN. Mr. President, I urge the approval of the amendments.

The PRESIDING OFFICER. The question is on agreeing to the amendments of the Senator from Virginia [Mr. WARNER].

The amendments (Nos. 629 and 630) were agreed to, en bloc.

Mr. WARNER. Mr. President, I move to reconsider the vote by which the amendments were agreed to, en bloc.

Mr. NUNN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 631

Mr. WARNER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Virginia [Mr. WARNER] proposes an amendment numbered 631.

Mr. WARNER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert:

SEC. 856. UNITED STATES ON-SITE INSPECTORS PROGRAM.

(a) FINDINGS.—The Senate recognizes the need for a program designed to establish a database of prospective personnel that would be qualified to participate in the on-site inspection process since the U.S. is currently engaged in multilateral and bilateral negotiations to reduce or eliminate various military weaponry and manpower. Specifically, the United States is negotiating reductions on strategic forces, conventional armaments and manpower, monitoring regimes for nuclear testing, and the complete elimination of chemical weapons.

(1) Monitoring requirements for these possible treaties will be extensive and stressing on United States national technical means. To complement and support NTM monitoring requirements the United States and Soviet Union have negotiated and are currently employing on-site inspection procedures for the INF Treaty. Similar on-site inspection provisions are being negotiated for possible future treaties and agreements.

(2) The Administration, and many in Congress, consider on-site inspection procedures to be an integral part of any future arms control treaty.

(3) During initial implementation of INF Treaty provisions, the United States was not fully prepared for the manpower requirements necessary to conduct on-site inspections. The Director of Central Intelligence has stated that on-site inspection requirements for any Strategic Arms Reduction Treaty (START) will be far more extensive than the INF Treaty. Estimates of possible START on-site locations are approximately 2,500 as opposed to 120 for the INF Treaty.

(4) Personnel requirements will be extensive, in terms of both numbers and technical and linguistic skills. Since INF Treaty verification requirements are already taxing current personnel resources, START and other requirements may quickly exceed the numbers of verification personnel with requisite technical and language skills.

(5) The Department of Defense organization best suited to establish such a database is the On-Site Inspection Agency. As an

agency of the Department of Defense, the OSIA was created to organize and coordinate United States Government efforts to monitor the INF Treaty, which includes all responsibilities for on-site inspections as required by the terms on the Treaty.

(b) REQUIREMENT.—Recognizing these requirements, the On-Site Inspection Agency shall establish a database of prospective personnel that could be called upon to conduct on-site inspections of any future arms control agreement that has such provisions as part of the terms of the Treaty.

(1) The database shall be composed of individuals with linguistic and technical skills necessary to conduct on-site inspections.

(2) This database shall consist of active military and other government agency personnel and, on a voluntary basis, non-government personnel with requisite skills to perform duties, on a full-time or part-time basis, as prospective on-site inspectors.

(c) THE INF TREATY DEFINED.—In this section, the term "INF Treaty" means the Treaty Between the United States and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles, signed in Washington, DC, on December 8, 1987.

Mr. WARNER. Mr. President, this sets up a data base for onsite inspection. It has been approved by both sides.

Mr. NUNN. Mr. President, I urge the approval of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Virginia.

The amendment (No. 631) was agreed to.

Mr. WARNER. I move to reconsider the vote by which the amendment was agreed to.

Mr. NUNN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. NUNN. Mr. President, I have a series of amendments that I would like to get approved. It will not take but just a minute, but they must be approved. People are counting on them, and they have been agreed to on both sides.

I ask unanimous consent that the pending Harkin amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 632

(Purpose: To provide credit for certain Indian contracting ventures toward meeting certain minority subcontracting goals)

Mr. NUNN. Mr. President, I first send an amendment to the desk on behalf of Mr. CONRAD.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Georgia [Mr. NUNN], for Mr. CONRAD (for himself, Mr. McCAIN, Mr. INOUE, and Mr. MURKOWSKI), proposes an amendment numbered 632.

Mr. NUNN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 247, below line 24, insert the following:

SEC. 856. CREDIT FOR INDIAN CONTRACTING IN MEETING CERTAIN MINORITY SUBCONTRACTING GOALS.

(a) REGULATIONS.—Pursuant to regulations which the Secretary of Defense shall prescribe and subject to subsections (b) and (c), in any case in which a subcontracting goal is specified for a Department of Defense contractor in the implementation of section 1207 of the National Defense Authorization Act of Fiscal Year 1987 (10 U.S.C. 2301 note) and section 8(d) of the Small Business Act (15 U.S.C. 637(d)), credit toward meeting that subcontracting goal shall be given for each Department of Defense contract awarded to that contractor, and each subcontract awarded by that contractor in connection with a Department of Defense contract, that—

(1) is to be performed on any Indian lands and meets the requirements of paragraph (1) of subsection (b); or

(2) is undertaken as a joint venture that meets the requirements of paragraph (2) of that subsection.

(b) ELIGIBLE CONTRACTS, SUBCONTRACTS, AND JOINT VENTURES.—(1) A contract or subcontract to be performed on Indian lands meets the requirements of this paragraph if—

(A) not less than 40 percent of the workers directly engaged in the performance of the contract or subcontract on the Indian lands are Indians; and

(B) the contractor or subcontractor has a management plan which—

(i) provides for Indians to manage the workforce employed in the performance of such contract or subcontract and, in the case of a contract or subcontract for the construction of facilities, provides for Indians to have an ownership interest in any facilities constructed pursuant to the contract or subcontract; and

(ii) is approved by the tribal government having jurisdiction over such Indian lands.

(2) A joint venture undertaking to perform a contract or subcontract meets the requirements of this paragraph if—

(A) an Indian tribe or tribally-owned corporation owns at least 50 percent of the joint venture;

(B) the activities of the joint venture under the contract or subcontract provide employment opportunities for Indians either directly or through the purchase of products or services for the performance of such contract or subcontract; and

(C) the Indian tribe or tribally-owned corporation manages the performance of such contract or subcontract.

(c) EXTENT OF CREDIT.—(1) The amount of the credit given for a contract or subcontract toward the attainment of any minority subcontracting goal under subsection (a) shall be the percentage of the value of the contract or subcontract designated by the prime contractor to whom the goal applies.

(2) The maximum percentage that may be designated by a contractor—

(A) in the case of a contract or subcontract to be performed on Indian lands, is the percentage equal to one-half of the ratio that the number of Indians performing work under the contract or subcontract on the Indian lands bears to the total number of workers performing such work; and

(B) in the case of a contract or subcontract undertaken by a joint venture referred to in subsection (a)(2), is the percentage of the tribe's or tribally-owned corporation's ownership interest in the joint venture.

(3) A contractor may apply the credit given under this subsection for performance of any contract or subcontract toward a subcontracting goal specified for any other Department of Defense contract or any other

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subcontract under a Department of Defense contract. A contractor may not, however, receive credit for any contract or subcontract that exceeds 100 percent of the value of the contract or subcontract.

(d) DEFINITIONS.—In this section:

(1) The term "Indian lands" has the same meaning as is provided in section 4(4) of the Indian Gaming Regulatory Act (102 Stat. 2468; 25 U.S.C. 2703(4)).

(2) The term "Indian" means an Indian, as defined in section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d)).

(3) The term "Indian tribe" has the meaning given to such term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(e)).

(4) The term "tribally-owned corporation" means a corporation owned entirely by an Indian tribe.

Mr. NUNN. Mr. President, this amendment would permit a prime contractor to receive credit toward the 5-percent small and disadvantaged business subcontracting goal, relating to Indian contracts. It has been approved on both sides.

Mr. WARNER. That is correct.

Mr. CONRAD. Mr. President, few areas are more in need of increased economic opportunity than Indian reservations. The amendment I am offering today will help foster reservation economic development by increasing defense procurement opportunities in Indian country.

Recently, National Public Radio aired a piece on the scourge of alcoholism plaguing our Nation's Indian reservations, NPR highlighted one of several problems eating away at the social fabric of reservation areas.

Mr. President, any effort to improve the social and economic well-being of native Americans must be accompanied by the availability of jobs. Joblessness serves to exacerbate problems like alcoholism, suicide, and other family and social problems stifling the reservation. Job opportunities can help correct them.

If we are serious about improving life in Indian country, we must get jobs to the reservation. We must provide incentives for businesses—whether large or small—to locate facilities on Indian reservations.

My amendment will help us do just that.

Mr. President, the Department of Defense has set a goal for major contractors to subcontract at least 5 percent of their work to minority businesses. However, while contractors receive credit for subcontracts, they do not receive any credit for two other types of arrangements: where they undertake joint ventures with minority or Indian-owned enterprises, and where they operate facilities on Indian reservations.

Many reservations do not possess a pool of management expertise necessary to spawn and maintain small Indian businesses, especially in areas like defense procurement. By locating facilities on reservations not only can larger enterprises provide job opportunities, but they can also help build

management talent and train prospective Indian entrepreneurs.

In addition, by joint venturing with Indian enterprises, large business concerns provide technical expertise that may not otherwise be easily attainable for Indian businesses.

Mr. President, this amendment provides credit for both of these relationships, but under very specific conditions.

If a business concern wishes to receive credit toward its DOD subcontracting goal by operating a facility on a reservation, under my amendment the facility in question must employ in its work force at least 40 percent native Americans. These employees must possess meaningful jobs and responsibilities. They can't just be pushing brooms.

In order to receive the credit, that same facility would have to institute a management plan approved by the tribal government providing for native Americans to eventually assume day-to-day management of the work force and ownership participation in the facility. Ideally, this would include company management training programs, apprenticeship programs, and other substantive activities.

The joint venture provision of this amendment will also provide a needed boost to Indian country and Indian business. It has been narrowly drafted to prevent abuses. It directs the Secretary of Defense to issue regulations providing for recognition of the attainment of minority subcontracting goals only where a joint venture is at least 50 percent owned by the Indian firm. This helps insure that the involvement of the Indian firm will not be a token arrangement.

I am very pleased to have as cosponsors of this amendment Senator Inouye, who chairs the Select Committee on Indian Affairs, Senator McCain, the committee's ranking minority member, and Senator Murkowski. All three have repeatedly proven their dedication to improving the lives of native Americans.

Mr. President, I urge the amendment's adoption.

I ask unanimous consent to print in the RECORD an analyses of contracting on Indian reservations.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONTRACTING ON INDIAN RESERVATIONS

Sponsor: Sen. Conrad.

Background: Current law encourages minority business ownership and participation in the award of government contracts and related subcontracts awarded by prime contractors.

To implement the policy, before a prime may receive certain government contracts, the prime must first negotiate a subcontracting plan specifying the small and disadvantaged business participation in the prime's subcontract awards. Currently, the goal for small and disadvantaged business participation in subcontracting is 5 percent.

To qualify as a disadvantaged business the majority interest in the firm must be owned

and controlled by members of a disadvantaged group. American Indians qualify as disadvantaged group. However, if Indians do not own the business, then the prime contractor may not receive credit towards the 5 percent goal for small and disadvantaged business participation in subcontract awards.

The economic reality on many Indian reservations is such that Indians do not own very many business and unemployment is chronic.

Proposed amendment: The amendment would permit a prime contractor to receive credit towards the 5 percent small and disadvantaged business subcontracting goal even though Indians do not own the business to which the prime contractor awards a subcontract under the following circumstances:

The work contracted for is performed on an Indian reservation and Indians manage the workforce which shall be not less than 40 percent Indian; or

A joint venture is established that is 50 percent owned by Indians.

Arguments for the amendment: It addresses chronic unemployment problems on Indian reservations and may lead to Indian business ownership if contractors form joint ventures with Indians.

It will assist defense contractors in meeting minority subcontracting goals.

Arguments against the amendment: Current small and disadvantaged business policy is to encourage contracting and subcontracting with minority owned business. The amendment may undercut that policy if contractors do not form joint ventures with Indians and instead utilize that authority under the amendment to receive credit for small and disadvantaged business participation if the work is performed on a reservation with a workforce that is at least 40 percent Indian.

The amendment does not incentivize contractors to form joint ventures with Indians.

Majority and minority staff recommendation: Support the amendment.

Note: (1) The Office of the Secretary of Defense's Small and Disadvantaged Business Utilization Office does not object to the amendment.

(2) We are resolving some drafting technicalities with the sponsor's staff. Therefore, the amendment is not ready to be offered yet.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, the question is on agreeing to the amendment of the Senator from Georgia.

The amendment (No. 632) was agreed to.

Mr. NUNN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. WARNER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, first I ask unanimous consent that the Harkin amendment be laid aside.

Mr. McCain. Mr. President, I reserve the right to object.